

REMARKS

At the outset, applicant strenuously objects to the procedures adopted in this case which clearly are contrary to the normal procedures of the PTO, to the due process which is applicable to the agency and to the fair play that applicants expect from the agency.

The prosecution was allegedly reopened because of the arguments submitted in the Appeal Brief. This is misleading because the arguments of the Appeal Brief had been presented in prior amendments as well as at the interview on September 22, 2004. In fact, the undersigned begged the Examiner in charge of this application, Mr. Jeff Gellman, to conduct a further search and offered to waive any objection to any further references to be relied upon; however, to now avail. The Supervisory Examiner adamantly insisted that the prior art was sufficient, that the rejections were perfectly proper and that therefore there was no need to make any further searches.

The undersigned was an Examiner in the PTO from 1946 to 1950 and is quite sure that this sort of deviation in the prosecution of a patent application, as occurred in the instant case, would not have been tolerated by the Primary Examiner in charge of the undersigned at the time. On information it appears that as of the time of the interview, the Assistant Examiner, Miss Alimenti, had joined the PTO only recently so that responsibility of the prosecution up to that time fell on the Supervisory Examiner. In fact, the Supervisory Examiner, Mr. Gellman,

appeared to be quite aware of his responsibility because he took control of the interview and was the sole spokesman during the interview.

The piecemeal prosecution approach is further demonstrated by the new § 112 rejection, which could and should have been raised before with other § 112 rejections already in the case.

Applicant would have preferred to maintain the case on appeal, but this new § 112 rejection dictates an amendment to claim 11 so as to avoid any likelihood that it might be sustained on appeal, thereby counting the appeal as sustained for statistical purposes, even if all other grounds of rejection are reversed.

As the reopening of the prosecution has thwarted the appeal procedures before it could even start, applicant respectfully requests that all appeal costs consisting of the Notice of Appeal Fee in the amount of \$170.00, of the Appeal Brief Fee in the amount of \$170.00 and of the Oral Hearing Fee of \$150.00 be restituted to applicant without further delay by crediting the Deposit Account No. 03-3560 of the undersigned with the corresponding amounts.

As will also appear more fully hereinafter, the prior art relied upon in the "reopened" prosecution did not justify such action because the newly cited art is hardly any more relevant to the instant invention than the prior art which was set aside to reopen the prosecution.

Applicant will now deal specifically with the various rejections in the Office Action of June 2, 2005.

Applicant respectfully traverses the objection to claim 13 under 37 C.F.R. § 1.75(c) as being of improper dependent form. Claim 13, by its language, points out that the number of pegs and holes which are similarly arranged is at least two which meant it must be two but can be more than two. Claim 13 thus explains and further clarifies the scope of the claim from which claim 13 is dependent. The objection appears to seek to impose on an applicant the choice of words for a claim and the manner of pointing out scope as well as limitations of claims. This is totally unwarranted.

The new rejection of claim 11 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, which should have been raised long ago is also respectfully traversed. To avoid any further questions, claim 11 has been amended.

The rejection of claims 1-11 and 13-19 under 35 U.S.C. § 103(a) as unpatentable over Beerens (U.S. Patent 5,098,328) further in view of Lemkin et al. (U.S. Patent 3,670,409) is also respectfully traversed.

The rejection is flawed for many reasons, of which the following are indicative.

As a major premise of the rejection, the Examiner contends that Beerens is "capable of being placed between a plant pot and the supporting surface...." Not only is there no suggestion in the patent for this statement, but the disclosure clearly indicates that this is not the

case because of the unevennesses of the surfaces (2) formed by the particular configuration of the building block of this patent. Of course, the building block as disclosed could hardly serve the purpose of this invention. Risking the danger of repetition, the present invention is predicated on the following considerations. Flower pots usually soil the supports on which they are placed or on which they rest. This soiling is quite difficult to remove, and practice has shown that a dishwasher is very efficient in removing the soil. This in turn means that the plant support must be made of a material capable of withstanding the rigors of a dishwashing cycle. Hence, the selection of plastic material. Furthermore, to be able to effectively clean the parts on all sides, it is important that the support can be disassembled into individual parts. Hence, the use of slat-like members which can be readily disassembled and reassembled after completing a washing cycle.

Another aspect underlying this invention is the desirability to protect pegs in slat-like members from being broken off in the use of the plant support. Hence, the particular arrangement of the pegs and holes as clearly set forth in claim 1.

Turning back to the rejection of the claims, the Examiner contends that Beerens's device "comprises a plurality of slat-like members defined as two or three cubes 1 coupled together." This is an absurd misinterpretation of the word "slat-like member" and of the disclosure of the reference.

Dealing with the particular arrangement of the pegs and holes in the present invention, the Examiner simply contends, "This symmetry allows laterally adjacent slat-like members to be rotated and yet still connectable concealing the pegs in thereof."

One only needs to look at Figure 3 of Beerens to realize that this contention is based on wishful thinking and that Beerens never contemplated the arrangement as defined in the claims.

With respect to the plastic injection-molding, reference is made to the Lemkin patent (column 1, lines 19-20). Apart from the fact that the combination of references is purely arbitrary considering the differences in their respective disclosures, applicant again respectfully submits that he does not contend to have invented injection-molding but refers to this method because it permits an inexpensive production of the individual slat-like members that form the support when assembled in accordance with this invention. Furthermore, applicant respectfully also draws the attention of the Examiner to column 4, lines 7-8 of the Beerens patent which points out that the plate (2) can be made by injection-molding.

Applicant respectfully submits that the rejection is based on wishful thinking of a disclosure in the Beerens patent which does not, in fact, exist. References must be construed as to their disclosure within the four corners of the disclosure and cannot be misinterpreted by what might be done based on hindsight of the disclosure of another invention.


With respect to the other rejections of the dependent claims, applicant at this point relies on arguments presented in the Appeal Brief which are incorporated herein in their entirety by reference and which clearly point out the inadequacies in the rejection. These prior arguments are clearly applicable to the rejections as found in the last Office Action because of the shortcomings and deficiencies of the two references relied upon in the final rejection and the reopened prosecution.

In view of the foregoing amendments and remarks, reconsideration of the rejections and early Notice of Allowance of all the claims are respectfully solicited. Admittedly, the invention of this application is not a technologically complicated invention. However, simplicity is no bar to the grant of a patent when the invention is novel and has utility and meets the statutory requirements.

Though no additional fee is believed required, it is respectfully requested that any shortage of fees be charged to the Deposit Account of Paul M. Craig, Jr., Account No. 03-3560.

Respectfully submitted,

PMC/mks


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, as First Class Mail, postage prepaid, in an envelope addressed to **MAIL STOP AMENDMENT**, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450, on August 29, 2005.

A handwritten signature in cursive script, appearing to read "Paul M. Craig, Jr.", written over a horizontal line.

Paul M. Craig, Jr.